

REMARKS

Upon entry of the foregoing amendments, claims 1-42 are cancelled without prejudice or disclaimer to the subject matter contained therein. New claims 43-55 are added. Support for new claims 43-55 can be found throughout the application as originally filed.

The amendments are made solely for advancing prosecution. Applicants, by amending or cancelling any claims herein, make no admission as to the validity of any rejection and/or objections made by the Examiner. Applicants reserve the right to reassert the original scope of any claim in a continuing application.

No new matter is introduced to this application within the meaning of 35 USC §132.

In view of the following, further and favorable consideration is respectfully requested.

1. Claim Objections

The Examiner objected to claim 36 because it is unclear how the coatings of the vascular prosthesis are intended to be layered.

The Examiner objected to claims 37-39 because it is unclear which coating the claim is referring to.

Applicants canceled claims 36-39. Therefore, the objections to claims 36-39 are rendered moot.

2. Claim Rejection - 35 U.S.C. §103(a)

Trogolo et al. in view of Ragheb et al.

In the Official Action, the Examiner rejected claims 36, 37 and 40-42 under 35 U.S.C. §103(a) as being unpatentable over Trogolo et al. (U.S. Patent No. 6,296,863) in view of Ragheb et al. (U.S. Patent No. 5,873,904).

The Examiner asserts Trogolo et al. discloses an antibacterial vascular prosthesis comprising a porous textile material of non-absorbable or only slowly absorbable polymer material wherein the textile surface and pore surfaces are coated and sealed with an absorbable material, further comprising silver ions wherein the non-absorbable or only slowly absorbable polymer material further comprises silver atoms of the silver layer impressed into the surface. The Examiner notes Trogolo et al. do not disclose using a closed, pure elemental silver to serve as a layer on the prosthesis.

The Examiner asserts Ragheb et al. teach an implantable medical device that has layers of pure elemental silver for the purpose of utilizing the material's antibacterial properties.

The Examiner concludes it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Trogolo et al. to have a closed layer of pure elemental silver in order to utilize the material's antibacterial properties. The Examiner also concludes that the layer thickness is a condition for which the optimum or workable ranges involve only routine skill in the art.

Applicants respectfully traverse this rejection.

To establish a *prima facie* case of obviousness, the PTO must satisfy three requirements. First, as the U.S. Supreme Court recently held in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ... it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ 1016, 1023 (C.C.P.A. 1970). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

In this respect, a proper case of *prima facie* obviousness has not been established in the present application, because Trogolo et al., taken alone or in combination with Ragheb et al., fail to teach or suggest all the elements/limitations of the present claims, as required by *In re Wilson*.

Applicants have canceled claims 36, 37 and 40-42. Therefore, the rejection of claims 36, 37 and 40-42 under 35 U.S.C. §103(a) is rendered moot.

In the present application, new independent claim 43 recites "An antibacterial vascular prosthesis prepared by a process comprising the steps of: (a) providing a porous basic structure; (b) depositing silver onto the surface of the porous basic

structure by means of an ion beam assisted deposition technique; and (c) impregnating the silver coated porous basic structure with an absorbable material.”

As such, Applicants submit that the combination of Trogolo et al. and Ragheb et al. fail to teach or suggest all the elements of the presently claimed antibacterial vascular prosthesis, and thereby fail to render the presently claimed antibacterial vascular prosthesis obvious. More specifically, the combination of Trogolo et al. and Ragheb et al. fail to teach or suggest an antibacterial vascular prosthesis prepared by a process comprising the steps of: (a) providing a porous basic structure; (b) depositing silver onto the surface of the porous basic structure by means of an ion beam assisted deposition technique; and (c) impregnating the silver coated porous basic structure with an absorbable material.

Therefore, the combination of Trogolo et al. and Bates et al. do not render in the instantly claim subject matter obvious. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Trogolo et al. in view of Ragheb et al. in further view of Shikani et al.

In the Official Action, the Examiner rejected claims 38 and 39 under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. (above) in view of Ragheb et al. (above) in further view of Shikani et al. (U.S. Patent No. 5,762,638).

Applicants respectfully traverse this rejection. The instant subject matter, as well as Trogolo et al. and Ragheb et al., are discussed above. Shikani et al. has been discussed in the previous response.

Shikani et al. disclose invasive medical devices comprising a polymer coated or incorporated with anti-infective and/or anti-inflammatory agents. The polymer further comprises pharmaceutical compositions having a delayed/sustained release from the polymer. Shikani et al. do not disclose an elemental silver layer in combination with an absorbable material. More importantly, the vapor-deposition method and the thickness of the silver layer are not shown.

More specifically, the combination of Trogolo et al., Ragheb et al. and Shikani et al. fail to teach or suggest an antibacterial vascular prosthesis prepared by a process comprising the steps of: (a) providing a porous basic structure; (b) depositing silver onto the surface of the porous basic structure by means of an ion beam assisted deposition technique; and (c) impregnating the silver coated porous basic structure with an absorbable material.

Therefore, the combination of Trogolo et al., Bates et al., and Shikani et al., do not render the instantly claimed subject matter obvious. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

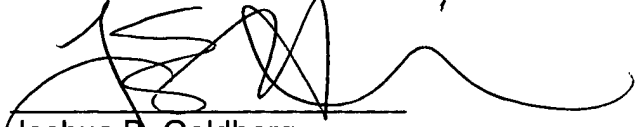
CONCLUSION

In view of the foregoing, Applicants submit that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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